

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-06-SE-324
Cooperative Light & Power Association)	NAL/Acct. No. 200732100024
Two Harbors, Minnesota)	FRN: 0002653921
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 3, 2007

Released: April 5, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Cooperative Light & Power Association (“CLP”), former licensee of Private Land Mobile Radio Service (“PLMRS”) stations WYU920, WYU921, WFK224 and KA40187, Two Harbors, Minnesota, apparently liable for a forfeiture in the amount of twenty thousand, eight hundred dollars (\$20,800) for operating its PLMRS stations without Commission authority and for failing to file timely renewal applications for the stations. CLP acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)¹, and Sections 1.903 and 1.949(a) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. CLP’s licenses for its PLMRS stations, WYU920, WYU921, WFK224 and KA40187, expired on July 17, 2004. On June 26, 2006, CLP filed a request for Special Temporary Authority (“STA”) to continue operating. The Wireless Telecommunications Bureau granted CLP STA to continue operating under call sign WQFG667 on July 11, 2006.³

3. Because it appeared that CLP may have operated its PLMRS stations after the expiration of its licenses, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On October 16, 2006, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry (“LOI”) to CLP.⁴

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903 and 1.949(a).

³ See STA File No. 0002664459 (granted July 11, 2006). The STA authorized CLP to operate on all of the frequencies previously authorized under call signs WYU920, WYU921, WFK224 and KA40187 under a single authorization, call sign WQFG667. The Wireless Telecommunications Bureau granted the STA without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

⁴ Letter from Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Steve Wattnem, Cooperative Light & Power (October 16, 2006).

4. In its November 20, 2006 response to the LOI,⁵ CLP states that it first became aware that its licenses had expired on June 21 or 22, 2006.⁶ CLP acknowledges that on April 30 and May 3, 2004, its operations manager received notices by mail indicating that its licenses had to be renewed by July 17, 2004.⁷ CLP states that its former office manager indicated that CLP's power supplier had filed its renewals in the past and that it would file these renewal applications.⁸ CLP concedes that it continued to operate the stations without authorization from July 17, 2004 through June 26, 2006.⁹ CLP also states that, after realizing that the licenses had expired, it immediately took measures to reapply for licensing "in order to mitigate this inadvertent usage."¹⁰ The Wireless Telecommunications Bureau granted CLP's application for a new license under call sign WQFX519 on October 30, 2006.¹¹

III. Discussion

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought and no sooner than 90 days prior to expiration".¹² Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹³

6. As a Commission licensee, CLP was required to maintain its authorizations in order to operate its PLMRS stations. CLP concedes that it operated the PLMRS stations without Commission authority from July 17, 2004 to June 26, 2006.¹⁴ By operating its PLMRS stations for approximately two years without authorization, CLP apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. CLP also acted in apparent violation of Section 1.949(a) of the Rules by failing to file timely renewal applications for the stations.

7. Section 503(b) of the Act,¹⁵ and Section 1.80(a) of the Rules,¹⁶ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules,

⁵ Letter from Tom Dahlstrom, Operations Manager to Peter Waltonen, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 20, 2006) ("LOI Response").

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ See File No. 0002779235.

¹² 47 C.F.R. § 1.949(a).

¹³ 47 C.F.R. § 1.955(a)(1).

¹⁴ See *supra* n. 9.

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 C.F.R. § 1.80(a).

and “repeatedly” means more than once.¹⁷ Based upon the record before us, it appears the CLP’s violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁸ Having considered the statutory factors, as explained below, we propose a forfeiture of \$20,800.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authorization and three thousand dollars (\$3,000) for failure to file required forms or information.¹⁹ As the Commission recently held, a licensee’s failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁰

10. We propose a forfeiture in the amount of \$5,000 for CLP’s unauthorized operation of each of its four stations after July 17, 2004, for a total proposed forfeiture of \$20,000. In proposing a total forfeiture amount of \$20,000, we recognize that the Commission considers a licensee who operates a station with an expired authorization in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount, per station, accordingly.²¹ Consistent with precedent,²² we also propose a forfeiture in the amount of \$1,500 for each station for CLP’s failure to file renewal applications for its four stations within the time period specified in Section 1.949(a) of the Rules. Thus, we propose an aggregate forfeiture of \$26,000 (\$20,000 for unauthorized operations and \$6,000 for failure to file timely renewal applications). The forfeitures relate to CLP’s apparent violations that occurred within the past year, but take into account that they were continuous in nature over a period

¹⁷ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992); see also *WCS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Div., 1998) (finding that a licensee’s inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed).

¹⁸ 47 U.S.C. § 503(b)(2)(E). See also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁹ 47 C.F.R. § 1.80(b).

²⁰ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (proposing forfeitures of \$5,000 and \$1,500 against a broadcaster who operated its station for 14 months without Commission authority and failed to timely file its renewal application) (“*Discussion Radio*”).

²¹ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see *Lazer Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Lazer Broadcasting*”); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Criswell*”); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186-18187 (Enf. Bur., Spectrum Enf. Div., 2005) (“*SDN*”).

²² See *Discussion Radio*, 18 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to timely file a renewal application for a broadcast station); see also *Lazer Broadcasting*, 21 FCC Rcd at 8712; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

of almost two years from July 17, 2004 through June 26, 2006.²³

11. CLP claims that it believed that its renewal applications were to be submitted in a timely manner through its power supplier. As a Commission licensee, CLP is charged with the responsibility of knowing and complying with the terms of its authorization, the Act and the Rules, including the requirement to timely renew the authorizations for its PLMRS stations.²⁴ Accordingly, no downward adjustment of the proposed forfeiture on this basis is warranted. We find, however, that a downward adjustment of the proposed forfeiture from \$26,000 to \$20,800 is warranted because CLP made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.²⁵

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁷ Cooperative Light & Power **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty thousand, eight hundred dollars (\$20,800) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁸ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Cooperative Light & Power **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251.

²³ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. *See, e.g., Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005).

²⁴ *See Discussion Radio*, 19 FCC Rcd at 7437; *see also Gilmore Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6286-87 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Gilmore*"); *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

²⁵ *See Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004); *see also Gilmore*, 21 FCC Rcd at 6286-87; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

²⁶ 47 U.S.C. § 503(b).

²⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁸ 47 C.F.R. § 1.80.

Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment of the *NAL* amount under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁹

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested to Cooperative Light & Power at 1554 Highway 2, Box 69, Two Harbors, MN 55616-0069.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁹ See 47 C.F.R. § 1.1914.